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No. 88-2035

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1989

**ADAMS FRUIT COMPANY, INC.,**

*Petitioner,*

v.

**RAMSFORD BARRETT, DAVID SAPP, EDWARD TYRELL, DARYL HAMILTON, GARFIELD HILLS, JR., ANTHONY GILL, LYNVAL ALDRIDGE, SEMORE HAYLES, AUDLEY KIRLEW and WINSTON WARNER,**

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF OF THE AMERICAN FARM BUREAU FEDERATION, THE FLORIDA FARM BUREAU FEDERATION, THE FLORIDA CITRUS MUTUAL, THE FLORIDA FRUIT AND VEGETABLE ASSOCIATION AND THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS IN SUPPORT OF THE PETITION

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## MOTION OF THE AMERICAN FARM BUREAU FEDERATION, THE FLORIDA FARM BUREAU FEDERATION, THE FLORIDA CITRUS MUTUAL, THE FLORIDA FRUIT AND VEGETABLE ASSOCIATION AND THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF THE PETITION

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Pursuant to Rule 36 of this Court, the American Farm Bureau Federation (AFBF), the Florida Farm Bureau Federation (FFBF), the Florida Citrus Mutual (FCM), the Florida Fruit and Vegetable Association (FFVA) and the

National Council of Agricultural Employers (NCAE) request leave to file the accompanying brief as *amici curiae* in support of the petition for a writ of certiorari. Counsel for the petitioner has consented to the filing of this brief. Counsel for the respondents has orally consented, but has not provided written consent.

AFBF was formed in 1919 and is the nation's largest general farm organization with member organizations in 49 states and Puerto Rico representing more than three and one-half million member families. FFBF has its principal offices in Gainesville, Florida and is composed of 62 county Farm Bureau organizations and, like AFBF, promotes, protects and represents the business, economic, social and educational interests of farmers and ranchers. FCM has its principal offices in Lakeland, Florida and promotes, protects and represents the economic, property and marketing interests of over 12,000 citrus growing members in the State of Florida. FFVA has its principal offices in Orlando, Florida and directs industry policies and protects property interests of member fruit and vegetable growers and operators in the State of Florida. NCAE has its principal offices in the District of Columbia and is the only national association focusing solely on growers' farm labor interests and problems. AFBF and NCAE participated in drafting the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) and their respective members are highly concerned with the proper interpretation and implementation of the Act.

All fifty states as well as the District of Columbia and Puerto Rico have state workers' compensation statutes. All such statutes either expressly cover agricultural employees or permit agricultural employers to elect coverage for their employees. Further, all such statutes specify that



remedies under the state workers' compensation statute are the exclusive avenue of recovery for workplace injuries.

The Eleventh Circuit's decision in *Barrett* v. *Adams Fruit Company, Inc.*, has deviated from this scheme of recovery for workplace injuries by concluding that farmworkers as a group have an additional avenue of recovery under AWPA. This decision, besides creating a clear split in the circuits, will have a devastating affect on the farmers of America that are members of the *amici* filing this motion.

Accordingly, the AFBF, FFBF, FCM, FFVA and NCAE seek to submit this *amici curiae* brief to assist the Court in evaluating the public importance and practical consequences of permitting agricultural employees to recover double benefits for work related injuries as presented in the petition for a writ of certiorari and respectfully request that their motion for leave to file the accompanying brief as *amici curiae* be granted for that purpose.

Respectfully submitted,

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## INTEREST OF THE AMICI CURIAE

The American Farm Bureau Federation (AFBF) is a voluntary general farm organization formed in 1919 and organized in 1920 under the General Not-For-Profit Corporation Act of the State of Illinois. It has its principal offices in Park Ridge, Illinois. AFBF was founded to protect, promote and represent the business, economic, social and educational interests of American farmers and ranchers. AFBF has member organizations in 49 states and Puerto Rico (including the Florida Farm Bureau Federation), representing more than three and one-half million member families. AFBF farmer and rancher members produce virtually every kind of agricultural commodity produced in the United States. As was noted repeatedly in the legislative history, AFBF played an important role in the drafting of and negotiations over the Migrant and Seasonal Agricultural Workers Protection Act. It was one of the parties to the consensus that led to this important law. See, e.g., 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary of Labor Robert B. Collyer); 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn). The AFBF thus has both a vital interest in seeing that the Act is properly interpreted and a valuable insight into the meaning and intent of the Act.

The Florida Farm Bureau Federation (FFBF) is a nonprofit cooperative membership association organized under the laws of the State of Florida. It has its principal offices in Gainesville, Florida. FFBF's purpose is to apply joint and collective efforts to more effectively promote, protect and represent the economic, social and educational interests of farmers and ranchers in the State of Florida. FFBF is comprised of 62 county Farm Bureau organiza-

tions with a total membership of more than 70,000 member families in the State of Florida.

The Florida Citrus Mutual (FCM) is a voluntary non-profit cooperative association organized under the laws of the State of Florida. It has its principal offices in Lakeland, Florida. FCM's purpose is to promote, protect and represent the economic, property and marketing interests of over 12,000 citrus growing members in the State of Florida.

The Florida Fruit and Vegetable Association (FFVA) is a non-profit member cooperative organized under the laws of the State of Florida. It has its principal offices in Orlando, Florida. FFVA's purpose is to direct industry policies and protect property interests of member fruit and vegetable growers and operators in the State of Florida.

The National Council of Agricultural Employers (NCAE) is a non-profit membership association organized in 1964 under the laws of the District of Columbia. NCAE has its principal offices in the District of Columbia and is the only national association focusing solely on growers' farm labor interests and problems. NCAE members in 35 states hire about 75 percent of the U.S. agricultural work force. NCAE participated with AFBF in drafting the Migrant and Seasonal Agricultural Worker Protection Act and NCAE members are highly concerned with the proper interpretation and implementation of the Act.

The American Farm Bureau Federation, the Florida Farm Bureau Federation, the Florida Citrus Mutual, the Florida Fruit and Vegetable Association and the National Council of Agricultural Employers have a direct interest in the outcome of this case. The court of appeals' ruling that the Act pre-empts the exclusive remedy provisions of workers' compensation laws is contrary to the interest



of AFBF, FFBF, FCM, FFVA, NCAE and their members who employ migrant and seasonal laborers in their agricultural operations.

## STATEMENT

This case presents the question of whether § 1854 of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. § 1854, pre-empts the exclusive remedy provisions of state workers' compensation laws.

1. AWPA regulates activities of farm labor contractors and employers and "assure[s] necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers." The Act protects agricultural workers by requiring employers and contractors to disclose relevant information and maintain records,[1] to pay wages promptly and in full,[2] to refrain from requiring workers to buy goods or services solely from them,[3] to abide by the terms of their contracts with workers,[4] to provide safe and sanitary housing,[5] and—most importantly for this case—to provide safe transportation for workers.[6]

Section 1841 of AWPA deals with the safety of motor vehicles used to transport migrant and seasonal workers. It requires that such vehicles conform to federal and state

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[1] 29 U.S.C. §§ 1821, 1831.
[2] 29 U.S.C. §§ 1822(a), 1832(a).
[3] 29 U.S.C. §§ 1822(b), 1832(b).
[4] 29 U.S.C. §§ 1822(c), 1832(c).
[5] 29 U.S.C. § 1823.
[6] 29 U.S.C. § 1841.

safety standards and that vehicle operators carry insurance or post a bond "against liability for damage to persons or property * * *." 29 U.S.C. § 1841(b)(1)(c). Subsection (c) provides that "[i]f an agricultural employer * * * is the employer of any migrant or seasonal agricultural worker for purposes of a State workers' compensation law and such employer provides workers' compensation coverage for such worker in the case of bodily injury or death * * * [n]o insurance policy or liability bond shall be required * * * if such workers are transported only under circumstances for which there is coverage under such State law." 29 U.S.C. § 1841(c).

The Act is enforced in several different ways. Section 1851 authorizes criminal prosecution of those who willfully or knowingly violate AWPA. In addition, the Secretary of Labor is authorized to bring civil actions in court seeking injunctive relief (29 U.S.C. § 1852) and to assess civil fines in administrative proceedings (29 U.S.C. § 1853). Finally—and again most importantly for this case—section 1854 authorizes any person aggrieved by a violation of AWPA to file suit for equitable relief, actual damages or statutory damages of $500 per plaintiff per violation.

2. Respondents, ten farm workers employed by petitioner, sued under § 1854 claiming that they had been injured in a motor vehicle accident while being transported to work in an allegedly unsafe van owned by petitioner. They sought damages for their injuries even though they had already applied for and received workers' compensation benefits. Florida law provides that "[t]he liability of an employer [under the workers' compensation law] shall be exclusive and in place of all other liability of such employer to * * * the employee * * *." *Fla. Stat.* § 440.11(1). The United States District Court for the Middle District of Florida granted petitioner's motion for partial summary judgment on the ground that the Florida workers' compensation statute provided respondents' exclusive remedy. Pet. App. 19a. The United States Court of Appeals for the Eleventh Circuit reversed. Pet. App. 15a.



3. The court of appeals acknowledged that AWPA neither occupies the regulatory field nor expressly preempts state law. In fact, as the court noted, AWPA expressly provides that it "is intended to supplement State law, and [does] not excuse any person from compliance with appropriate State law and regulation." Pet. App. 4a (quoting 29 U.S.C. § 1871). The court considered the case under the branch of pre-emption doctrine that asks whether "the state law stands 'as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " Pet. App. 4a (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)).

As a-threshold matter, the court declined to give effect to the Secretary of Labor's regulation that provides that "[w]here a State workers' compensation law is applicable * * * the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death."[7] The court held that because the case involved a "question[ ] of statutory construction * * * the deference with which we would ordinarily treat administrative regulations is not appropriate." Pet. App. 5a.

The court then examined the history and purpose of the Act and concluded that it pre-empted the exclusive remedy

[7] 29 C.F.R. § 500.122(b). This regulation relates only to the section of the Act governing motor vehicle safety and insurance. It therefore directly governs this case, but does not govern cases involving injuries arising from other violations of the Act (e.g., unsafe housing, failure to abide by contractual safety provisions). It was not directly relevant to the Fourth Circuit's decision in *Roman* v. *Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir.), *cert. denied*, 108 S.Ct. 163. (1987).

provision of state workers' compensation laws. In interpreting the 1982 Act, the court placed considerable reliance on an effort in 1978 to amend the Act's predecessor, the Farm Labor Contractor Registration Act ("FLCRA"), which was repealed by AWPA. The unsuccessful amendment to FLCRA would have given effect to the exclusive remedy provisions of state workers' compensation laws. Pet. App. 7a-8a.

The court held that the provision for a private right of action was central to the Act's enforcement and would be frustrated if effect were given to state workers' compensation laws. Pet. App. 10a-12a. The court distinguished this Court's holding in *United States* v. *Demko*, 385 U.S. 149, 152 (1966), that "where there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." *Demko*, the court of appeals reasoned, involved two federal statutes (rather than one federal and one state law), and the legislative history of AWPA, in the court of appeals' view, implied that "Congress intended to provide heightened protection for migrant and seasonal agricultural workers." Pet. App. 13a. In addition, the court of appeals reasoned that AWPA intended to provide workers with full recovery for their actual damages. Florida workers' compensation law allows for recovery of only two-thirds of back wages. Pet. App. 14a.

The court of appeals forthrightly acknowledged that its decision directly conflicted with that of the Fourth Circuit in *Roman* v. *Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir.), *cert. denied*, 108 S.Ct. 163 (1987). The court held that "[w]e cannot agree with the fourth circuit that § 1871 compels a conclusion of nonpreemption." Pet. App. 5a, n.1. *See also* Pet. App. 3a (acknowledging that the district court followed the decision of the Fourth Circuit).



## REASONS FOR GRANTING THE PETITION

The conflict between the Fourth and the Eleventh Circuits leaves agricultural employers in an intolerable state of uncertainty. According to the Secretary of Labor's regulation and the Fourth Circuit decision, an agricultural employer who provides workers' compensation insurance to its migrant and seasonal agricultural workers need not obtain additional insurance (or anticipate additional financial liability) for accidents and injuries covered by workers' compensation. The workers' compensation coverage would suffice because workers' compensation would be the exclusive remedy. This is in accord with the expressed intent of Congress "that in those situations where agricultural workers are transported and are covered by State workers' compensation no additional insurance for damages to persons need be obtained."[8]

But in light of the Eleventh Circuit's decision—which afforded absolutely no deference to the Secretary of Labor—agricultural employers can no longer be confident that workers' compensation will cover their liability. By holding that AWPA pre-empts the exclusive remedy provisions of the workers' compensation laws in effect in every state, the court of appeals has placed agricultural employers in the unfortunate position of having either to purchase additional insurance they might not need or to assume that the Secretary's regulation still governs and thus expose themselves to substantial financial risk. In addition, by requiring additional insurance or exposing agricultural employers to greater financial risks, the conflict places

[8] H.R. Rep. No. 97-885, 97th Cong., 2d Sess. 20, *reprinted in* 1982 U.S. Code Cong. & Ad. News 4566 (hereinafter referred to as "House Report").

farmers in the Eleventh Circuit and in any other district or circuit that might follow the Eleventh Circuit's approach at a competitive disadvantage with those in the Fourth Circuit and elsewhere.[9]

This Court should grant the petition in order to resolve the conflict among the circuits and the doubt over the validity of the Secretary of Labor's regulations and to relieve the uncertainty of farmers across the nation.

## I.

## THE COURT OF APPEALS' DECISION THAT AWPA PRE-EMPTS STATE WORKERS' COMPENSATION LAWS IS INCORRECT AND CONFLICTS WITH THE DECISION OF THE FOURTH CIRCUIT AND THE APPROACH TAKEN BY THIS COURT IN SIMILAR CASES.

### A. The Court Of Appeals Erred In Deciding That AWPA Pre-empts State Law.

1. AWPA was enacted in 1982 as a consensus bill, with the support and cooperation of the Reagan administration, both parties in Congress, organized labor, migrant farm worker groups, and representatives of agricultural employers including the American Farm Bureau Federation.[10]

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[9] The United States District Court for the District of Oregon recently followed the Eleventh Circuit's approach, holding that AWPA pre-empts the exclusive remedy provision of Oregon's workers' compensation law. *Fletes* v. *John I. Haas, Inc.*, No. 89-85-FR (June 2, 1989).

[10] As Robert B. Collyer, Deputy Undersecretary of Labor, testified in support of the bill:

> This cooperative effort has now resulted in a consensus bill, endorsed by the AFL-CIO, the Migrant Legal Action Program and by major agricultural employer organizations, such as the American Farm Bureau Federation * * *.

128 Cong. Rec. 32,464. See also 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn).



The Act superseded entirely the Farm Labor Contractor Registration Act of 1963 ("FLCRA"). That statute had proven ineffective to protect workers and excessively burdensome on employers. AWPA was designed to improve the protection of workers while at the same time eliminating unnecessary administrative burdens and clarifying the responsibilities of employers. See 128 Cong. Rec. 32,459 (statement of Senator Hatch); Cong. Rec. 32,464 (statement of Deputy Undersecretary of Labor Collyer); 128 Cong. Rec. 32,466 (statement of Senator Byrd); 128 Cong. Rec. 26,009 (statement of Representative Erlenborn); 128 Cong. Rec. 26,009 (statement of Representative Panetta).

One of the difficulties that Congress faced in drafting both FLCRA and AWPA stemmed from the fact that there were several different arrangements under which agricultural workers might be employed. FLCRA was aimed at correcting some of the abuses that were found when workers were supplied to farmers by labor contractors (commonly called "crew leaders") who moved with the harvest and supplied labor to several farmers at a time.[11] Many labor contractors were conscientious and honest, but other unscrupulous contractors exploited both workers and farm owners.

Among the many labor contractor abuses was transporting workers to farm worksites in unsafe, uninsured vehicles.[12] Because it was difficult for states to keep track

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[11] See 128 Cong. Rec. 26,010 (statement of Representative Panetta); 128 Cong. Rec. 26,008 (statement of Representative Erlenborn); 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer).

[12] See 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer); House Report at 2.

of and regulate the ever-moving contractors, and because in several states, workers' compensation coverage was not mandatory for agricultural employers (and in other states' labor contractors did not fall within the definition of "employer"), those who were killed or injured in unsafe labor contractor vehicles were often left uncompensated. One of the reforms attempted by FLCRA was to require crew leaders to carry insurance to compensate the workers for any injuries they received during transport.[13]

Following the enactment of FLCRA and particularly the amendment of that law in 1974, a great deal of confusion arose over whether "fixed-situs" farm employers had to register as labor contractors and were covered by FLCRA.[14] Perhaps because they were easier to locate than crew leaders, migrant labor groups and, at times, the Department of Labor attempted to require farm owners who hired migrant workers to register as labor contractors and to enforce FLCRA against them even though the Act was clearly not designed to fit their situations.[15]

2. AWPA was intended in significant part to correct the abuses that occurred under FLCRA and to come to grips with the differences between labor contractors and fixed-situs agricultural employers. The Act retains the requirement that labor contractors register with the Department of Labor but makes it clear that this requirement does not apply to fixed-situs employers. 29 U.S.C. §§ 1802(7), 1811. On the other hand, the critical protections afforded to migrant and seasonal agricultural workers—including the requirement of safe, insured transport—apply without regard to whether the workers are employed directly by farm operators or through crew leaders.

[13] See Sen. Rep. No. 202, 88th Cong. 2d Sess., *reprinted in* 1964 U.S. Code Cong. & Ad. News 3695.

[14] See House Report at 2; 128 Cong. Rec. at 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer); 128 Cong. Rec. 26,008-09 (statement of Representative Erlenborn).

[15] See House Report at 2-4; 128 Cong. Rec. 32,459 (statement of Senator Hatch); 128 Cong. Rec. 32,464 (statement of Deputy Undersecretary Collyer); 128 Cong. Rec. 26,008-09 (statement of Representative Erlenborn).



As actual employers, farm operators are much more likely than labor contractors to be covered by (or to be eligible to elect coverage under) state workers' compensation laws.[16] In thirteen states plus the District of Columbia agricultural employers are required to carry workers' compensation coverage on the same terms as other employers.[17] Twenty-two other states require such coverage but include some limitations not applicable to other covered employees.[18] And in the remaining fifteen states, agricultural employers may elect to come under the workers' compensation law.[19] In all states, whether coverage is mandatory or elective, once an employer is covered, workers' compensation becomes the exclusive remedy for employee injuries.[20]

By covering workers employed directly by agricultural employers, AWPA vastly increased the number of workers who would be covered by both AWPA and state workers' compensation laws. But there is absolutely no indication that Congress intended to disturb the historic compromise embodied in workers' compensation statutes. That AWPA

[16] Fixed-situs agricultural employers are also much easier for states to keep tabs on and to ensure that required workers' compensation coverage is maintained.

[17] See 4 A. Larson, THE LAW OF WORKMEN'S COMPENSATION, App. A, Table 4, pp. 4-1 to 4-5.

[18] *Id.*

[19] *Id.*

[20] See 2A A. Larson at 12-1.

was not intended to pre-empt the exclusive remedy provisions of such state laws is demonstrated in two different ways. To begin with, Section 1871 expressly provides that AWPA "is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation."

In addition, AWPA specifically exempts employers covered by workers' compensation from the only insurance requirement under the Act, that found in § 1841 dealing with motor vehicle safety. That section provides that "[n]o insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State [workers' compensation] law." The sponsors of the bill—who wanted to clarify the obligations of farm employers—assured them "that in those situations where agricultural workers are transported and are covered by State workers' compensation no additional insurance for damage to persons need be obtained." House Report at 20.[21]

Giving effect to the language of Section 1841 and the expressed intent of Congress, the Secretary of Labor (of the Administration that introduced the bill) promulgated a regulation on August 12, 1983, shortly after AWPA became law, providing that:

> Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death.

29 C.F.R. § 500.122(b).

[21] See also Section-by-Section analysis prepared by Senate Labor Committee, 128 Cong. Rec. at 32,462; statement of Deputy Undersecretary Collyer, 128 Cong. Rec. 32,465.



3. The court of appeals disregarded the language of the statute and its legislative history and refused to defer to the interpretation of the Secretary of Labor. Relying on this Court's decision in *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 447-448 (1987), the court of appeals held that no deference is appropriate for questions of statutory construction. But as the language quoted by the court of appeals makes clear, *Cardoza-Fonseca* (which was itself quoting *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 843, n.9 (1984)) stands for the far less sweeping proposition that "[t]he judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent * * *." In light of the language and history, the Secretary of Labor's construction of § 1841 can hardly be said to be "contrary to clear congressional intent."

Moreover, *Cardoza-Fonseca* examined the question of judicial deference in the context of agency adjudication, rather than agency rulemaking. The *Chevron* decision quoted in *Cardoza-Fonseca* dealt with deference to agency regulations, and the Court's analysis deserves a more complete exposition than that given by the court of appeals:

> If * * * the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, * * * the question for the court is whether the agency's answer is based on a permissible construction of the statute.
>
> * * *
>
> We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations

> "has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations."
>
> ". . . If this choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned." *United States* v. *Shimer*, 367 U.S. 374, 382, 383 (1961).

467 U.S. at 842-845 (citations and footnotes omitted.)

Congress specifically authorized the Secretary of Labor to promulgate regulations implementing AWPA. 29 U.S.C. § 1861. Certainly those regulations are entitled to at least some deference; the Eleventh Circuit afforded none.

4. The analysis of the court of appeals was faulty in several additional respects. The court's notion that if workers' compensation formed the exclusive remedy for workers' injuries employers "would have little incentive to comply with the transportation safety requirements set out in AWPA and its regulations" (Pet. App. 12a) is misguided. First of all, workers' compensation insurance premiums reflect the injury experience of an employer's workers; if an employer disregards safety requirements, it will suffer direct financial consequences.[22] Moreover, the Act also provides for civil fines to be imposed by the Department of Labor (29 U.S.C. § 1853) and—in cases of willful or knowing violations—even the possibility of criminal prosecution (29 U.S.C. § 1851). To say that employers covered by workers' compensation would have little incentive to comply with AWPA is to ignore reality.

[22] 1 A. Larson, at 14 & n.18.



Finally, the court of appeals was certainly correct in stating that AWPA was intended to allow workers to recover their losses, but there is absolutely no evidence that Congress intended to allow double recovery, once through workers' compensation and a second time through AWPA. The court's reasoning that a workers' compensation award undercompensates injured workers is precisely the argument this Court rejected in *United States* v. *Demko*, 385 U.S. at 152-153, and ignores the fact that workers' compensation benefits (unlike wages) are not taxed. I.R.C. § 104(a)(1).

### B. The Court Of Appeals' Decision Conflicts With That Of The Fourth Circuit And With The Approach Taken By This Court.

In light of the statutory language, the legislative history and the Secretary of Labor's regulations, it is hardly surprising that the only court of appeals previously to decide the very issue presented in this case held "that when a migrant agricultural worker is injured on the job and his injury is covered by a state workers' compensation law [that] provides that it is the exclusive remedy, * * * the worker is bound by that provision." *Roman* v. *Sunny Slope Farms, Inc.*, Pet. App. at 29a. In that case, the plaintiff claimed that he was injured when he was sprayed with a toxic pesticide. He claimed that his employer failed to provide protective clothing as required by their written employment agreement and thus violated AWPA § 1822(c), which requires employers to abide by the terms of their agreements with workers. The plaintiff sued the employer under § 1854 even though he was covered under the South Carolina workers' compensation law.

The Fourth Circuit held that AWPA did not pre-empt the exclusive remedy provision of state law and affirmed the dismissal of the suit. The court noted that § 1871 expressed Congress's intention to supplement, rather than supplant, state law. Pet. App. 25a. It also relied on the fact that § 1841—which was not directly involved in that case but is in this case—exempted employees covered by state workers' compensation laws from the motor vehicle insurance law:

> In addition to demonstrating that Congress did not intend to pre-empt state law, § 1841 shows that Congress was cognizant of state workers' compensation laws, for AWPA was in that instance written in view of and to mesh with the state laws, and not to interfere or supersede them.

Pet. App. 26a. This Court denied certiorari, 108 S.Ct. 163.

The Eleventh Circuit reached precisely the opposite conclusion in this case. Even though this case directly involved § 1841, and was therefore a stronger case for giving effect to the state law, the court of appeals held that AWPA pre-empts state exclusive remedy laws. It is impossible to reconcile the two decisions. The Fourth Circuit held that even when the suit is not directly based on § 1841, suits for injuries under § 1854 of AWPA are precluded by the exclusive remedy provision of state workers' compensation law. The Eleventh Circuit, to the contrary, held that even when the suit *is* based on § 1841 (where the statutory language, the legislative history and the Secretary of Labor's regulation all argue against pre-emption), § 1854 pre-empts the exclusive remedy provision of state law and such suits are therefore not barred.

As the Fourth Circuit pointed out, a holding that AWPA pre-empts state workers' compensation law also conflicts with the approach taken by this Court in *United States* v. *Demko*, 385 U.S. 149 (1966) and *Johanson* v. *United States*, 343 U.S. 427 (1952). In *Demko*, a federal inmate employed in a prison industry was injured on the job and received compensation benefits under a special federal compensation statute, 18 U.S.C. § 4126. He then attempted to sue the government under the Federal Tort Claims Act. This Court considered the federal compensation statute to be the equivalent of a workers' compensation law and held that it provided the plaintiff's exclusive remedy:



> [T]he right of recovery granted groups of workers covered by such compensation laws is exclusive. * * * [W]here "the Government has created a comprehensive system to award payments for injuries, it should not be held to have made exceptions to that system without specific legislation to that effect." * * * [W]here there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group.

*Id.* at 151-152 (quoting *Johanson* v. *United States*, 343 U.S. 427, 441 (1952)). See also *Patterson* v. *United States*, 359 U.S. 495 (1959).

Following the *Demko* approach, the Fourth Circuit in *Roman* held that state workers' compensation laws are the exclusive remedy for covered migrant workers injured on the job. But the Eleventh Circuit in this case held to the contrary, even though there was no "specific legislation" pre-empting the exclusive state remedy and even though the language of the federal statute, its history and the contemporaneous regulations of the Secretary of Labor indicate that Congress did not intend to pre-empt state law.

## II.

## THE COURT OF APPEALS' DECISION LEAVES AGRICULTURAL EMPLOYERS IN AN INTOLERABLE STATE OF UNCERTAINTY AND THREATENS TO DISRUPT THEIR OPERATIONS.

Agricultural employers in all 50 states and the District of Columbia either are required to maintain workers' compensation coverage (35 states and D.C.) or may elect to do so (15 states).[23] In all of the states, once an employee is covered, the remedies provided by workers' compensation are exclusive. Relying on the language of § 1841 and the regulations issued by the Secretary of Labor, agricultural employers throughout the nation have assumed that their workers' compensation insurance completely covers them for any liability for on-the-job injuries, just as it does nonagricultural employees. Particularly with regard to liability for employees injured in vehicle accidents, before now there seemed absolutely no reason to obtain additional insurance. In fact, Congress told farmers that "no additional insurance for damages to persons need be obtained." House Report at 20. The Eleventh Circuit's decision is contrary to the long held view that state workers' compensation statutes are a satisfactory method to compensate individuals for workplace injuries.

Now the decision of the Eleventh Circuit has created serious uncertainty. Farmers in Florida, Georgia and Alabama would be prudent to obtain additional insurance. Those in the adjacent Fourth Circuit may be able to rely on the *Roman* decision and assume that workers' compensation is the exclusive remedy, but even they have

[23] See 4 A. Larson, App. A, Table 4, p. 4-1.



reason to be nervous. For farmers elsewhere, the legal rules (and their potential liability) are completely in doubt.

Unfortunately, agriculture can be a hazardous occupation. The National Safety Council reported that in 1987 agricultural workers suffered 160,000 workplace injuries and 1,600 deaths. National Safety Council, *Accident Deaths* 97 (1988 ed.). A significant percentage of agricultural injuries resulted from motor vehicle accidents such as the one involved in this case.[24] Given the substantial risk of injury, it would be unconscionable to allow farm employers to remain in the uncertainty created by the Eleventh Circuit's decision.

Not only does the Eleventh Circuit's decision create intolerable uncertainty, but the conflict among the circuits creates a competitive imbalance among farmers. Those in the Eleventh Circuit (and now those in Oregon) must incur the added expense of additional insurance to cover injuries to workers (or must anticipate additional losses), while at least those in the Fourth Circuit (and perhaps those elsewhere) can rely on their workers' compensation coverage. In addition, the decision places agricultural employers (who must obtain additional insurance in excess of workers' compensation coverage) at a competitive disadvantage with employers in all other industries. This Court should not permit this inequity to continue.

[24] See Payton, *Farm Injuries*, 15 EMERGENCY MEDICAL SERVICES 28 (1986).

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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